

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DANNY KING, *on behalf of himself and
all others similarly situated,*

Plaintiff,

Case No. 6:17-cv-00427

v.

CITIZENS DISABILITY LLC,

Defendant.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendant Citizens Disability LLC (“Citizens Disability”) hereby removes this case from the First Judicial District Court for the State of New Mexico, Santa Fe County (“State Court”), to the United States District Court for the District of New Mexico. In support of this notice of removal, Citizens Disability states as follows:

I. NOTICE OF REMOVAL

1. Citizens Disability exercises its rights under the provisions of 28 U.S.C. §§ 1331, 1441, and 1446 to remove this case from the State Court in which the case was filed under the name and style, Danny King v. Citizens Disability LLC, Case No. D-101-CV-2017-00536.

2. 28 U.S.C. § 1441(a) provides that “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”

3. Plaintiff initiated this civil action in the State Court. Specifically, on or about February 25, 2017, plaintiff Danny King (“Plaintiff”) filed a Complaint in the State Court against

Citizens Disability. The case has not been tried.

4. Plaintiff delivered a copy of the Summons and the Complaint to Citizens Disability on or about March 9, 2017. A true and accurate copy of the Summons and Complaint served on Citizens Disability is attached hereto as Exhibit 1.

II. SUBJECT MATTER JURISDICTION

5. The Court has subject matter jurisdiction over this matter and this case is properly removed to this Court pursuant to 28 U.S.C. §§ 1331 and 1367 because the Complaint arises under, or relates to, the laws of the United States.

A. Federal Question Jurisdiction Under 28 U.S.C. § 1331

6. 28 U.S.C. § 1331 states that “[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

7. Removal here is proper under 28 U.S.C. § 1441(a) because the Court has original jurisdiction over Plaintiff’s claims arising under federal law.

8. Specifically, Plaintiff’s Complaint purports to assert a claim under the federal Telephone Consumer Protection Act, 42 U.S.C. § 227 (“TCPA”).

9. Plaintiff’s alleged TCPA claim arises under federal law so as to present a federal question within the meaning of 28 U.S.C. § 1331, and thus this case is properly removed to this Court. See Mims v. Arrow Fin. Servs., LLC, 132 S. Ct. 740, 747 (2012) (TCPA claims arise under federal law, such that federal courts have federal question jurisdiction over TCPA claims).

B. Supplemental Jurisdiction Under 28 U.S.C. § 1367

10. 28 U.S.C. § 1367 states that “in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of

the same case or controversy.”

11. In addition to asserting a claim under the TCPA, Plaintiff purports to assert a state law claim under the New Mexico Unfair Practices Act based upon the exact conduct that gives rise to his alleged federal TCPA claim.

12. The state law claim is directly related to the federal law claim as it arises from the same alleged telephone calls, both claims rely upon the same factual allegations, and both claims are interrelated to the controversy giving rise to this action.

13. Accordingly, because the state law claim is so related to the federal law claim, the court has jurisdiction over all of the claims in this action under 28 U.S.C. § 1337.

III. PROCEDURAL COMPLIANCE

14. In accordance with the requirements of 28 U.S.C. § 1446(b), this Notice of Removal is filed within thirty (30) days after receipt by Defendant of a copy of the summons and the initial pleadings setting forth the claims for relief on which this removal is based.

15. Pursuant to 28 U.S.C. § 1441 *et seq.*, the right exists to remove this case from the State Court to the United States District Court for the District of New Mexico, which embraces the place where the action is pending.

16. The United States District Court for the District of New Mexico embraces the county in which the state court action is now pending, and thus, this Court is a proper venue for this action pursuant to 28 U.S.C. § 84(b).

17. No previous application has been made for the relief requested herein.

18. Pursuant to the provisions of 28 U.S.C. § 1446(a), included within the attached Exhibit 1 is a copy of the Complaint bearing Case No. D-101-CV-2017-00536, filed in the State Court.

19. As required by 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being promptly served upon counsel for Plaintiff, and a copy is being filed with the Clerk of the State Court.

20. Pursuant to 28 U.S.C. § 1446(a) and D.N.M. LR-Civ. 81.1(a), legible copies of all records and proceedings from the State Court will be filed with this Court within twenty-eight (28) days after filing this Notice of Removal.

WHEREFORE, Citizens Disability respectfully requests that the Court assume jurisdiction over this matter and that no further proceedings be held in the State Court. In the event that any question arises as to the propriety of removal, Citizens Disability requests the opportunity to submit briefs and be heard at argument in support of its position that removal is proper.

SOMMER, UDALL, HARDWICK & JONES, P.A.

Attorneys for Defendant Citizens Disability LLC

/s/ Jack N. Hardwick

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April 7, 2017

CERTIFICATE OF SERVICE

I, Jack N. Hardwick, certify that on April 7, 2017, this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent via first class mail, postage prepaid, to those indicated as non-registered participants.

/s/ Jack N. Hardwick
Jack N. Hardwick